

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 3, 2016**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2015AP1255-CR**

**Cir. Ct. No. 2014CT16**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RICHARD J. SLAYTON,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Walworth County:  
JAMES L. CARLSON, Judge. *Affirmed.*

¶1 REILLY, P.J.<sup>1</sup> Richard Slayton challenges the sufficiency of a search warrant which authorized the taking of his blood following his arrest for operating a motor vehicle while intoxicated (OWI). Slayton argues that the affidavit provided to the magistrate was insufficient as the officer's assertion that Slayton had prior convictions for OWI were "legal conclusions" and did not establish the source of the officer's knowledge. We affirm as the affidavit provided probable cause that Slayton committed the offense of OWI, had prior convictions for OWI, and was refusing to submit to a test of his blood for chemical analysis.

### *FACTS*

¶2 The affidavit attached to the application for the search warrant set forth the following uncontested facts: Slayton was arrested on December 13, 2013, for OWI after Officer Derrick Goetsch of the Fontana police department stopped Slayton's vehicle at 2:09 a.m. after he observed Slayton's vehicle cross the center line on a public highway. Slayton was the driver and exhibited an odor of intoxicants, bloodshot and glassy eyes, slurred speech and failed field sobriety tests. The affidavit indicates that Goetsch had reviewed Slayton's driving record which reflected that Slayton had previously been convicted of OWI and the prior convictions were "a prior countable offense under [WIS. STAT. ch.] 346." Slayton does not challenge the stop of his vehicle nor does he challenge the probable cause for his arrest. Slayton does not set forth any of the facts leading up to his arrest in his brief. Slayton's sole issue is "the sufficiency of an officer's affidavit in support of a warrant for an OWI blood draw."

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

*STANDARD OF REVIEW*

¶3 Our standard of review for a challenge to the issuance of a search warrant requires us to determine “whether the magistrate was apprised of sufficient facts to excite an honest belief in a reasonable mind that the object sought is linked with the commission of a crime.” *Bast v. State*, 87 Wis. 2d 689, 692-93, 275 N.W.2d 682 (1979). “The magistrate’s finding must stand unless the proof is clearly insufficient.... The evidence necessary for a finding of probable cause is less than that required at a preliminary examination or for a conviction.” *Id.* (citations omitted).

*ANALYSIS*

¶4 Slayton argues that Goetsch’s assertion within the affidavit that he had reviewed Slayton’s driving record and determined that Slayton had previous countable convictions for OWI was insufficient as “it relied on the officer’s mere conclusions.” We disagree. The assertion by Goetsch was a statement of fact; Goetsch did in fact review Slayton’s driving record which reflected that Slayton had previous, countable convictions under WIS. STAT. ch. 346. Slayton does not challenge any of the facts asserted by Goetsch that his driving record does in fact reflect previous countable convictions. We affirm as Goetsch’s assertions to the magistrate were not “mere conclusions” rather they were statements of fact and all the facts taken together are more than sufficient to believe that a chemical test of Slayton’s blood would link Slayton with the commission of a crime.<sup>2</sup>

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<sup>2</sup> The State argues that in addition to probable cause for issuance of the search warrant we should decline appellate review as Slayton did not challenge the issue raised in the circuit court. Addressing the merits avoids addressing two issues.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE  
809.23(1)(b)4.

